

II. REMARKS

Applicant offers the following remarks in response to the Office Action dated June 30, 2010.

A. STATUS SUMMARY

Claims 1, 3-16, 18-25, and 27-32 are pending in the present application. Claims 2, 17, and 26 have been previously cancelled without prejudice. No claims have been added. Accordingly, claims 1, 3-16, 18-25, and 27-32 remain pending.

In this Amendment, Applicant has amended claims 1, 4, 6-10, 12, 14-16, 18, 21-25, and 30-32. Applicant is not conceding that the subject matter encompassed by claims 1, 4, 6-10, 12, 14-16, 18, 21-25, and 30-32 prior to this Amendment is not patentable over the art cited by the Examiner. Claims 1, 4, 6-10, 12, 14-16, 18, 21-25, and 30-32 were amended to facilitate expeditious prosecution of the present application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by claims 1, 4, 6-10, 12, 14-16, 18, 21-25, and 30-32 as presented prior to this Amendment and additional claims in one or more continuing applications. Applicant respectfully submits that it believes the amendments are fully supported by the Specification as filed and that no new subject matter has been added.

B. CLAIM REJECTIONS – 35 U.S.C. § 101

Claims 16, 18-25, and 27-32 were rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. Applicant respectfully traverses. Applicant further respectfully submits that the allegations are in error. For example, the allegation that Applicant's

claimed “recordable” medium is “energy per se” is not believed supported by any reasonable interpretation of Applicant’s claim language. (Office Action dated June 30, 2010, page 4).

However, Applicant has amended certain of the rejected claims as indicated above to expedite prosecution. Applicant believes that no new matter has been added and that these amendments are fully supported by the Specification as filed.

Applicant respectfully submits that claims 16, 18-25, and 27-32 are directed to statutory subject matter and that the rejection of claims 16, 18-25, and 27-32 under 35 U.S.C. § 101 should be withdrawn.

C. CLAIM REJECTIONS – 35 U.S.C. § 103

Claims 1-3, 5-11, 13-16, 18, 20-23, 25, 27, and 29-32 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent Application Publication No. 2003/0023661 to Clohessy et al. (hereinafter “Clohessy”), in view of U.S. Patent No. 6,493,871 to McGuire et al. (hereinafter “McGuire”). Applicant respectfully traverses.

Certain of the requirements for establishing *prima facie* obviousness were discussed within the Response filed April 5, 2010, and are incorporated by reference as if fully set forth herein. The Patent Office has again failed to establish *prima facie* obviousness and the present rejection should be withdrawn.

Applicant further incorporates by reference its Response filed April 5, 2010, as if fully set forth herein.

The independent claims are claims 1, 10, 16, and 25. Applicant provides the discussion below with reference to the language of claim 1 for convenience. However, it is understood that

the discussion below applies at least equally to each other independent claim with further consideration for the unique features of each other independent claim, and applies to the combination of references as cited, though Applicant will respond to certain specific allegations directly.

Further, Applicant is not conceding to the present rejections. Though Applicant has amended certain claims for language preference, antecedent basis, form, and/or to expedite prosecution, Applicant provides the discussion below regarding the present rejections with respect to the language of certain portions of these claims, as entered prior to and after amendment, to further assist the Patent Office with a determination that the present rejections are in error for several reasons. Applicant respectfully submits that restatement of the present rejections in a future Office Action would be in error for at least the reasons discussed below.

With reference to the rejection and language of claim 1, claim 1 recited prior to amendment, among other things, “automatically recursively resolving, upon determining that the list of the prerequisites that are not currently present on the client device . . . the prerequisites by identifying a final set of OSGi bundles on the server that fulfills the prerequisites within the resource limitations of the client device” The Patent Office alleges that this claimed subject matter is disclosed within Figure 4 of the Clohessy reference. (Office Action dated June 30, 2010, page 7).

However, as previously discussed in the Response filed April 5, 2010, the Clohessy reference discloses that “[a]t step 110, the operator of the portable device will make a decision regarding whether the identified one or more new application components should be loaded

despite the insufficiency of the CARSRMAX.” (Clohessy, para. 0044, emphasis added). As such, the Clohessy reference is not believed to recursively resolve prerequisites.

In contrast to Applicant’s claimed subject matter, the Clohessy reference as cited appears to allow an operator to remove a program at the operator’s discretion or to allow a program to be loaded despite insufficient resources, and in either case only in response to operator intervention. Applicant respectfully submits that removing a program to allow another program to be loaded or allow a program to be loaded despite insufficient resources are both readily distinguishable from Applicant’s claimed automatically recursively resolving prerequisites.

The Patent Office alleges in its Response to Arguments section that “the server side has automatic response” and alleges that the admitted operator assistance on the client side “does not make the operation non-automatic.” (*Id.*, at page 3). Applicant respectfully submits that this allegation is in clear and arbitrary error. A person of ordinary skill would not find this allegation to be reasonable.

The Patent Office further alleges that “any computer assistance to a process renders it automatic at least in part.” *Id.* However, the clear admission by the Patent Office that the operator must intervene shows not only the difference between Applicant’s claimed subject matter and the cited disclosure, but further shows that the Patent Office has interpreted Applicant’s claim language in a manner that is inconsistent with Applicant’s Specification.

The Patent Office is respectfully reminded that “[d]uring patent examination, the pending claims must be “given their broadest reasonable interpretation consistent with the specification.” (MPEP 2111 quoting The Federal Circuit’s *en banc* decision in *Phillips v. AWH Corp.*, 415 F.3d

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1303, 75 USPQ2d 1321 (Fed. Cir. 2005), emphasis added). The Patent Office is further reminded that “[t]he Patent and Trademark Office (‘PTO’) determines the scope of claims in patent applications not solely on the basis of the claim language, but upon giving claims their broadest reasonable construction ‘in light of the specification as it would be interpreted by one of ordinary skill in the art.’ ” (MPEP 2111 quoting *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364[, 70 USPQ2d 1827] (Fed. Cir. 2004), as quoted by *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005), emphasis added).

Based upon the Patent Office’s admission that the Clohessy reference requires an operator to intervene and based upon the actual disclosure of the Clohessy reference that requires the operator to make a decision regarding whether the identified one or more new application components should be loaded despite the insufficiency of the CARSRMAX, Applicant respectfully submits that the Patent Office has over-broadened Applicant’s claimed subject matter in a manner that is not consistent with Applicant’s Specification. Further, this over-broadening would not be reasonable to a person of ordinary skill in the art. Accordingly, the Patent Office has unreasonably over-broadened Applicant’s claimed subject matter and the present rejection should be withdrawn for at least this reason.

Further, this unreasonable over-broadening of Applicant’s claimed subject matter further results in a failure of the Patent Office to properly determine the scope of Applicant’s claimed subject matter and further results in a failure to properly determine the differences between Applicant’s claimed subject matter and the cited disclosure, both of which are in clear error and the present rejection should be withdrawn for at least these additional reasons.

Applicant has amended claim 1 to expedite prosecution and to clarify “automatically recursively resolving via the server device, [[upon]] in response to determining that the list of the prerequisites that are not currently present on the client device . . . the prerequisites by identifying a final set of OSGi bundles on the server device that fulfills the prerequisites within the resource limitations of the client device” As such, Applicant has clarified that the server device performs the automated recursive resolving “in response to determining that the list of the prerequisites that are not currently present on the client device.” Accordingly, Applicant is not claiming the operator assisted processing of the Clohessy reference and restatement of the present rejection would be in further clear error for at least this additional reason.

Claim 1 additionally recited prior to amendment, among other things, that “the list of the prerequisites that are not currently present on the client device would not require more client device OSGi package and service interface resources than the current OSGi package and service interface resources of the client device” The Patent Office alleges in its Response to Arguments section that the Clohessy reference discloses in paragraph [0035] that an “RDL is comprised of Java which is packaged based and provides interface components.” (Office Action dated June 30, 2010, page 2). The Patent Office further alleges that “Figure 2A discloses that the application is run on a PDA which discloses the application interface as well.” (*Id.*, at page 3, emphasis added).

However, Applicant finds no disclosure of Applicant’s claimed service interface resources of an OSGi package within paragraph [0035] of the Clohessy reference. As such, the Patent Office has provided no evidence within the record of this claimed subject matter.

Applicant has further reviewed Figure 2A and respectfully submits that the application interface, as admitted by the Patent Office, is believed readily distinguishable from Applicant's claimed OSGi package and service interface resources. As such, the present rejection is in clear error and should be withdrawn for at least these additional reasons.

Further, regarding the Patent Office's allegation of a Java archive (JAR) file interface against Applicant's claimed subject matter by indicating that "the RDL is comprised of Java, which is package based and provides interface components," Applicant respectfully submits that a JAR file interface is distinguishable from Applicant's claimed OSGi package and service interface resources for several reasons.

A Java package is believed to be for organizing classes, such as via a compressed JAR file. In contrast, Applicant's claimed OSGi packages/bundles are believed to be understood to include dynamically loadable collections of JAR files, configuration files, and other classes, and may as such include multiple Java packages. As such, OSGi packages/bundles are distinguishable and a JAR file is not the same as an OSGi bundle. Additionally, Applicant's claimed OSGi package and service interface resources are readily distinguishable from a Java interface of the disclosed RDL. Accordingly, the allegations of the Patent Office are further in error for at least these additional reasons.

Applicant has amended claim 1 to expedite prosecution and to clarify that Applicant is claiming OSGi package and OSGi service interface resources. Accordingly, Applicant is clearly not claiming the application user interface of Figure 2A of the Clohessy reference and

restatement of the present rejection would be in further clear and arbitrary error for at least this additional reason.

Further regarding the Patent Office's Response to Arguments section, Applicant notes that the Patent Office selectively quotes a portion of the McGuire reference in an attempt to counter the speculative disclosure of the McGuire reference as discussed within the Response filed April 5, 2010. For example, the Patent Office partially quotes the McGuire reference as a "server, in response to the request, prepares update files corresponding to the requested files and downloads them to the client." (Office Action dated June 30, 2010, page 3, Examiner emphasis omitted). In this context, the Patent Office alleges that the disclosure of the McGuire reference is not merely speculative regarding file downloads. *Id.* However, this allegation is in clear error. It is noted that the very next sentence of the McGuire reference states that the "downloaded files may or may not be exactly the requested files." (McGuire, Summary of the Invention).

As such, the Patent Office has mischaracterized the actual disclosure of the McGuire reference, the disclosure is speculative as previously argued, is not enabling for the subject matter alleged as previously argued, and the present rejection and allegation are in clear error. Applicant respectfully submits that the Patent Office may benefit from additional review of Applicant's Response filed April 5, 2010, as incorporated above.

Based upon this analysis, the factual disclosure of the cited portions of the Clohessy and McGuire references are different from that alleged by the Patent Office and distinct from Applicant's claimed subject matter. Further, the Patent Office has not alleged that the McGuire reference cures the multiple deficiencies of the Clohessy reference. Applicant believes that the

McGuire reference as cited does not cure these deficiencies. As such, the claimed subject matter is not taught or suggested by the combination of references as cited. Further, the Patent Office has not provided any articulated reasoning as to why a person of ordinary skill in the art would find the claims as a whole obvious in the absence of the claim features not present in the cited combination of references. Accordingly, the Patent Office's allegations of the factual disclosure of the Clohessy reference in combination with the McGuire reference are in error and the rejection of claim 1 should be withdrawn for at least these additional reasons. Independent claims 10, 16, and 25 include elements similar to those discussed above in association with the rejection of claim 1. Accordingly, for at least the same reasons, the rejection of claims 10, 16, and 25 should be withdrawn. The Patent Office has further erred by failing to properly determine the differences between Applicant's claim language and the cited combination of references. Additionally, the Patent Office's legal conclusion of obviousness is also in error as at least being based upon erroneous factual allegations.

As such, the Office Action dated June 30, 2010, fails to identify multiple elements of claims 1, 10, 16, and 25 within the combination of the cited references. Accordingly, the Patent Office has failed to establish a *prima facie* case of obviousness and the present rejections should be withdrawn for at least this reason. Applicant respectfully submits that claims 1, 10, 16, and 25 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant reserves the right to provide additional arguments against the combination of the Clohessy reference with the McGuire reference in the future if needed.

Claims 3 and 5-9 depend from claim 1. Claims 11 and 13-15 depend from claim 10. Claims 18 and 20-23 depend from claim 16. Claims 27 and 29-32 depend from claim 25. Applicant incorporates by reference the arguments above with respect to the independent claims and respectfully submits that each argument points out specific distinctions believed to render the dependent claims patentable for at least the same reasons as the independent claims from which they depend and the arguments above do not constitute a general allegation. Accordingly, the rejections of claims 3, 5-9, 11, 13-15, 18, 20-23, 27, and 29-32 are in error for at least the same reasons as the rejections of the independent claims from which they depend, are believed moot in view of the multiple clear errors discussed above, and should be withdrawn for at least the same reasons as the independent claims from which they depend. Applicant reserves the right to provide additional arguments against the rejections of the dependent claims in the future if needed. Applicant respectfully submits that claims 3, 5-9, 11, 13-15, 18, 20-23, 27, and 29-32 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant's dependent claims do not stand or fall together.

Claims 4, 12, 19, and 28 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Clohessy, in view of U.S. Patent Application Publication No. 2003/0131226 to Spencer et al. (hereinafter "Spencer"). Claim 24 was rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Clohessy, in view of McGuire, and further in view of U.S. Patent Application Publication No. 2005/0004974 to Sharma et al. (hereinafter "Sharma"). Applicant respectfully traverses.

The standards for establishing a *prima facie* case of obviousness have been set forth in the Response filed April 5, 2010. The Patent Office has not established a *prima facie* case of obviousness and the present rejection should be withdrawn.

Claim 4 depends from claim 1. Claim 12 depends from claim 10. Claims 19 and 24 depend, either directly or indirectly, from claim 16. Claim 28 depends from claim 25. Applicant incorporates by reference the arguments above with respect to the independent claims and respectfully submits that each argument points out specific distinctions believed to render the dependent claims patentable for at least the same reasons as the independent claims from which they depend and the arguments above do not constitute a general allegation. Accordingly, the rejections of claims 4, 12, 19, 24, and 28 are in error for at least the same reasons as the rejections of the independent claims from which they depend, are believed moot in view of the multiple clear errors discussed above, and should be withdrawn for at least the same reasons as the independent claims from which they depend. Additionally, the Patent Office has not alleged that the Spencer and/or Sharma references cure the deficiencies discussed above with respect to the combination of the Clohessy and McGuire references. Applicant believes that the Spencer and/or Sharma references as cited do not cure these deficiencies. As such, the claimed subject matter is not taught or suggested by the combination of references as cited. Applicant reserves the right to provide additional arguments against the rejections of the dependent claims in the future if needed. Applicant respectfully submits that claims 4, 12, 19, 24, and 28 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant's dependent claims do not stand or fall together.

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Applicant additionally notes that the Patent Office has alleged certain disclosure with respect to specific references to form the present rejections. Applicant addressed certain of these specific allegations herein. However, it is understood that Applicant's arguments are directed to the combination of references as cited. Failure to address each point raised in the Office Action should not be viewed as accession to the Examiner's position or an admission of any sort. No amendment made herein was related to the statutory requirements of patentability unless expressly stated herein. No amendment made was for the purpose of narrowing the scope of any claim unless an argument has been made herein that such amendment has been made to distinguish over a particular reference or combination of references.

Applicant respectfully submits that claims 1, 3-16, 18-25, and 27-32 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant reserves the right to provide additional arguments against the rejection of these claims in the future if needed. In view of the above, reconsideration and allowance are respectfully requested.

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III. CONCLUSION

In light of the above Amendments and Remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Office Action.

Although it is believed that no fees are due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 09-0461.

Respectfully submitted,

Lee Law, PLLC

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